Form FMC-2 (Rev. 07-89) UNITED STATES GOVERNMENT FEDERAL MARITIME COMMISSION

Memorandum

TO : Bryant L. VanBrakle, Secretary DATE: January 13, 2004

FROM : Rebecca F. Dye, Commissioner

SUBJECT : Petition No. P9-03 - Petition of C.H. Robinson Worldwide, Inc., for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts.

On January 13, 2004, I met with Mr. Carlos Rodriguez of the law firm Rodriguez O'Donnell Ross Fuerst Gonzalez & Williams, as well as Mr. Joseph Mulvehill and Mr. Jeffrey Scovill of C.H. Robinson Worldwide at their request to receive their views on C.H. Robinson Worldwide's petition to the Federal Maritime Commission. Ed Lee, my counsel, was also present at the meeting. The petition requests an exemption pursuant to Section 16 of the Shipping Act of 1984 to permit C.H. Robinson International, Inc., a licensed Ocean Transportation Intermediary (OTI), to utilize confidential service contracts with its shippers.

Mr. Rodriguez stated that the commercial environment has changed greatly since the enactment of the Ocean Shipping Reform Act of 1998, and C.H. Robinson's services to its customers have changed as well. As U.S. manufacturing has moved overseas, many U.S. companies have turned to logistics companies, such as C.H. Robinson, to handle all of their transportation services and supply chain management. Mr. Scovill, the director of international development at C.H. Robinson, described his companies business interests. C.H. Robinson Worldwide is one of North America's largest third party logistics companies with 160 offices throughout the world and 4,000 employee. Mr. Scovill also stressed that his company's business operations are very different from that of ocean vessel operators and traditional non-vessel operating common carriers.

Mr. Scovill reported that his customers want to sign contracts covering all the services provided by his company including

ocean shipping operations. He also indicated that his customers are very insistent that these contracts be confidential to protect their proprietary business information in a very competitive business environment.

Mr. Scovill and Mr. Mulvehill, vice president international at C.H. Robinson, believe that their customers do not want to sign multiple contracts with ocean carriers, but would rather have the greater flexibility of using C.H. Robinson to manage their complete inventory and transportation operations. Shippers want all their logistics needs integrated. Mr. Scovill and Mr. Mulvehill also reported that their company spends thousands of dollars annually to maintain tariffs that their customers do not use.

Form FMC-2 (Rev. 07-89) UNITED STATES GOVERNMENT FEDERAL MARITIME COMMISSION

Memorandum

TO : Bryant VanBrakle **DATE:** January 12, 2004

FROM : Commissioners Harold J. Creel, Jr. and Joseph E. Brennan

SUBJECT : Summary of Oral Presentation of APL Limited re P3-03, P5-03, P7-03, P8-03, and P9-03

This summary of an oral presentation, which took place on January 8, 2004 at 10:00 AM at the Commission's offices at 800 North Capitol Street, NW, Washington, DC., is being submitted to the Secretary of the FMC for submission into the record of the above proceedings.

Present for the Commission were:

Commissioner Joseph E. Brennan
Commissioner Harold J. Creel, Jr.
Steven Najarian, Counsel to Commissioner Brennan

Present for the presenters were:

Robert T. Basseches, Shea & Gardner, Washington, DC
Roy G. Bowman, Vice President, Government Affairs, APL Limited, Washington, DC
David B. Cook, Shea & Gardner, Washington, DC
John G. Reeve, Reeve & Associates, Yarmouthport, MA
Robert F. Sappio, Senior Vice President, Tram-Pacific Market, APL Limited, Oakland, CA
Eric R. Swett, Associate Counsel, APL Limited, Oakland, CA

The presenters made the following points:

APL does $4 billion worth of business annually, with $2 billion in the Pacific trade. It is the second largest ocean carrier for transport into, and out of, the United States. It is the largest intermodal carrier for the U.S. West Coast. It participates in the Maritime Security Program and VISA. APL owns APL Logistics.

Because the NVO petitions pending before the Commission have significant implications for the commerce of the United States, the FMC should thoroughly investigate the issues presented. APL disagrees with several of the claims and statements in the petitions, but the main purpose APL's presentation is merely to urge the Commission to investigate the matter thoroughly.

The ability to sign service contracts with beneficial cargo owners gives ocean carriers a competitive advantage. That advantage comes at a price. Ocean carriers such as APL invest in ships, terminals, and other maritime assets. NVOs, in contrast, have not invested in maritime infrastructure. The assets of NVOs do not benefit the maritime industry.

The profit margin for ocean carriers is low. APL will be very profitable this year. This profit results from both rate increases and cost-cutting.,

APL's ownership of APL Logistics does not give APL an advantage. The two companies have separate profit-and-loss statements. APL deals with many logistics companies, not just its own. Only 26% of APL Logistics's business is with APL.

OSRA has helped APL to transform. It is good that OSRA has made varied pricing possible. OSRA is working and should not undergo a major change at this, time.

The prospect that the NVOs may seek to have Congress amend the Shipping Act if the FMC denies the petitions is another reason for the Commission to look at the petitions thoroughly, Congress may need the input of an expert agency in considering the financial and policy implications of giving service-contract authority to NVOs. The FMC should develop a full record, even if the agency, decides that it lacks the authority to grant the petitions.

If allowed to sign service contracts with their shipper customers, NVOs will aggregate greater volumes of cargo and will have great leverage against the ocean carriers. They will force APL and other ocean carriers out of business. Only the controlled carriers, which do not need to make a profit, will remain in business. Controlled carriers do not invest in infrastructure and innovation as APL does.

There is no indication that the large NVOs are suffering financially.

Giving service contract authority to only some NVOs will not work. On what basis does one distinguish between NVOs? Who will make the distinction?, The NVOs themselves are not united as to what they want.

Under the Shipping Act, a service contract is defined in terms of ocean common carriers only. Congress rejected the Gorton amendment, which would have deleted the word "ocean."

The petitions, if granted, would effectively remove substantial authority from the FMC.

NVOs already have the ability to be creative in terms of logistics solutions.

The growth of service contracting after OSRA has resulted in lower average rates for shippers.

Shippers mainly want reliability, information on the status of their shipments, and a fair price. Price is not the only consideration for shippers.

There is no factual basis for granting the petitions, and doing so would disrupt the industry.

It is not right to level the playing field when the players are not the same. The vessel-operating carriers, not the NVOs, invest in maritime infrastructure.